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**Human Rights Committee**
**111th session**

**Summary record of the 3072nd meeting**
Held at the Palais Wilson, Geneva, on Wednesday, 9 July 2014, at 3 p.m.

*Chairperson*: Sir Nigel Rodley

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*The meeting was called to order at 3.10 p.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant** (*continued*)

*Initial report of Malawi* (CCPR/C/MWI/1, CCPR/C/MWI/Q/1/Add.1 and 2 and HRI/CORE/MWI/2012)

1. *At the invitation of the Chairperson, the delegation of Malawi took places at the Committee table.*

2. **Ms. Banda** (Malawi) said that Malawi welcomed the opportunity to continue the dialogue it had embarked upon with the Committee in 2011, when the Committee had considered the situation in the country in the absence of a report. The initial report and the written replies to the list of issues had been drawn up following broad consultations involving, among others, several ministries, the Malawi Human Rights Commission and various civil society organizations. The country's first tripartite elections (presidential, legislative and municipal) had been held in May 2014. Homosexuality remained a criminal offence, although in practice no prosecutions were brought in that regard. The Law Commission had reviewed the laws punishing homosexuality and had submitted its conclusions. However, owing to a lack of resources, the special commission to spearhead the reform of the relevant legislation had not yet been formed. A healthy debate was under way on the issue of minority rights, with the active involvement of civil society organizations advocating those rights. As to women's rights, a new law, the Gender Equality Act, which incorporated the main provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, had been adopted in 2013 and the laws on abortion and the prevention of domestic violence were currently being reviewed by two special law commissions. The Disabilities Act, containing the main elements of the Convention on the Rights of Persons with Disabilities, had been adopted. As to freedom of expression, a policy to guarantee access to information had been developed and the Access to Information Bill would be submitted to Parliament in September 2014. The commission of inquiry set up to look into the events of 20 and 21 July 2011, when 20 demonstrators had been killed, had made a number of recommendations, which had helped guarantee that subsequent demonstrations passed off peacefully. Definite progress had been made in legislative and institutional terms, but much remained to be done to ensure that ordinary people gradually took on board the principles enshrined in the Constitution and the law.

3. Summarizing the written replies to the Committee's list of issues, she said that the principles and provisions of the Covenant had been incorporated into the Constitution, chapter IV of which contained a bill of rights covering most of the civil and political rights enshrined in the Covenant. The Law Commission, which was responsible for the reform of legislation, systematically incorporated international human rights instruments into national law. Under the Constitution, the national courts were empowered to refer to the provisions of public international law and the case law of foreign jurisdictions when interpreting the provisions of the Constitution and of national legislation. The Malawi Human Rights Commission had been established under the Constitution and was regulated by its founding law of 1998. The Commission was an independent body whose task was to investigate human rights violations and to promote and protect human rights in the broadest sense. It drew up reports containing recommendations, and they were submitted to Parliament by the Minister of Justice and Constitutional Affairs for action. The main obstacle to the successful performance of the Commission's task was a lack of funding, a problem that unfortunately affected all Malawi's public institutions.

4. As to the decriminalization of consensual same-sex relationships, the Law Commission had been asked to give an opinion on the constitutionality of articles 137A, 153 and 156 of the Penal Code but the review had stalled for lack of resources. That fact

did not in any way call into question the Government's determination to review those provisions. Malawi had not established a mechanism specifically to monitor cases of violence based on sexual orientation because there had been no complaints relating to acts of violence of that kind and there was no information on the subject. The appropriation of widows' estates was punishable by a fine and a term of imprisonment under the Deceased Estates (Wills, Inheritance and Protection) Act of 2011. Moreover, the recent Gender Equality Act criminalized traditional practices harmful to women's dignity, health or freedom. The HIV/AIDS (Prevention and Management) Bill currently before the Cabinet made the rite of sexual cleansing a criminal offence, as being a factor in the spread of HIV/AIDS. Several information campaigns on violence against women had been organized. The Marriage, Divorce and Family Relations Bill had not yet been adopted because its provisions prohibiting polygamy and raising the legal minimum age of marriage continued to provoke debate. Nevertheless, efforts were being made to find a way out of the impasse. Currently, there were no plans to criminalize marital rape but that possibility had not been ruled out.

5. With regard to the case of Edson Msiska, legal proceedings were ongoing against three police officers. It was, however, extremely unlikely that the death of Fanikizo Phiri, unfortunate though it was, would result in legal proceedings, given the time that had elapsed since the events had taken place and the difficulties that presented in collecting evidence. The Director of Public Prosecutions had ruled that the police inquiry into the death of Robert Chasowa had been unsatisfactory and ordered further investigations to be carried out. The procedure was ongoing. As to police brutality, one of the measures taken had been to introduce a course on human rights into basic police training and the preparation of a human rights manual for police officers. The Lay Visitors Scheme, which enabled ordinary citizens to monitor the conditions of detention at police stations, had been implemented in accordance with the new Police Act. The Independent Police Complaints Commission had not yet been established owing to a lack of resources and, as a temporary measure, the police had set up a complaints unit. The new Legal Aid Act did not deny persons in police custody access to a lawyer. The Act regulated the grant of legal aid according to criteria that were in line with international practice. Alternative measures to detention applicable in Malawi included community service, suspended sentences, the confiscation of property and the payment of a fine or of compensation to the victim. As to the judicial system, measures had been taken to reduce the backlog of cases and to increase the number of judges, including lay judges. Among other safeguards in relation to searches without a warrant, the Police Act provided that: written grounds must be duly provided for a search to be authorized; a copy of the record of the search must be given to the owner of the premises searched, and any objects seized must be immediately taken to a magistrate. The Penal Code had been amended in 2010 to punish offences against morality involving children and the Child Care, Protection and Justice Act punished practices harmful to children, such as trafficking, abduction and forced marriage. The Law Commission had completed its review of the Adoption of Children Act and recommended the introduction of provisions to protect children adopted by foreign nationals. Finally, section 46 of the Penal Code, empowering the Ministry of Information and Civic Education to ban newspapers, had been repealed.

6. **The Chairperson** invited members of the Committee who so wished to put questions to the delegation.

7. **Ms. Waterval** asked whether the Law Commission had sufficient resources to do its work, whether it had reviewed the laws containing provisions discriminating against women and if so what amendments it had recommended, and whether it was empowered to make recommendations to the Government on laws whose content was not in itself contrary to the Covenant, but which were applied in a manner incompatible with the Covenant. She would also like to know what human and financial resources were available to the Malawi

Human Rights Commission and how many of its recommendations had been implemented. She wondered whether the Commission was accredited as an institution in compliance with the Paris Principles and, in the event that the Commission had investigated any cases of violence against homosexual, bisexual or transsexual persons, what recommendations it had made to the Government in that regard. Finally, she asked the delegation to clarify how the lack of funding could explain the Law Commission's decision to suspend its review of the articles of the Penal Code criminalizing homosexuality.

8. **Ms. Majodina** asked what action the Government was taking to make it clear to the public that practices such as the appropriation of widows' estates, "sexual cleansing" and levirate were completely unacceptable in a State which had undertaken to fully respect human rights. It would be useful to have information on the outcome of any awareness-raising campaigns or training programmes to eliminate those practices, as well as statistics on the number of cases related to those practices that had been brought before the courts and the number that had resulted in a conviction. She also asked the delegation to indicate whether the Marriage, Divorce and Family Relations Bill contained guarantees protecting widows against those practices and to explain why Parliament was taking so long to adopt the Bill. While noting the measures taken to combat domestic violence, she said it was regrettable that the data provided in that regard had not been disaggregated and that no information had been provided on the number of investigations opened, prosecutions brought and judgements handed down. She asked whether the support units for women victims of violence that had been set up within the community police services had the necessary skills to investigate acts of violence and punish the perpetrators and how many women had received assistance from those units. She asked the delegation to comment on the information provided by NGOs, to the effect that only half of female victims of violence requested assistance and that they only contacted the specialist community police units in 3 per cent of cases. She asked the delegation to say what percentage of allegations of violence resulted in legal proceedings and whether there were plans to implement training programmes on combating domestic violence for judges and law-enforcement officials. She asked why rape had not been criminalized as part of the recent amendments to the Penal Code. As to trafficking in persons, and particularly trafficking in children, she asked the delegation to indicate how many victim advice and support centres with adequate resources had been set up; whether awareness-raising activities were being carried out; whether the Government was prepared to take the necessary steps to ensure the prompt adoption of a law against trafficking; and whether law-enforcement personnel received training in victim identification, investigation methods and the conduct of legal proceedings in cases of trafficking.

9. **Mr. Vardzelashvili** said that he welcomed the de facto moratorium on the death penalty that had been in place for a number of years, as well as the High Court ruling finding the law imposing the death penalty in all cases of murder unconstitutional. However, he found it regrettable that Malawi had no plans to abolish the death penalty or, in consequence, to ratify the Second Optional Protocol to the Covenant. Noting that, in 2010, in the wake of that High Court ruling, the relevant provisions of the Penal Code had been amended to give the High Court discretion to sentence those convicted of murder to death or to life imprisonment, he asked the delegation to say how many death sentences had been handed down and how many sentences had been commuted since then. He also wished to know for which offences the courts had handed down the death sentence since 2007 and, since the 2010 amendments, how the law defined the crime of murder and whether the law contained criteria on which judges could base their decision to hand down a sentence of death or of life imprisonment. Finally, it would be useful to know whether the State party planned to extend the moratorium on the application of the death penalty, or to establish a legal framework in that regard.

10. He asked whether there were clear guidelines for the use of firearms by the police and whether the regulations had been reviewed following the killings committed by police officers. He thanked the delegation for the information provided on the investigation into the death of Edson Msiska and the sanctions taken against those responsible, but wondered why the authorities had not investigated the killing of Fanikizo Phiri. Bearing in mind the considerable body of evidence incriminating the police in the death of the student Robert Chasowa, the slow pace of the inquiry seemed to point to a lack of political will. He also found it regrettable that the authorities had not felt it necessary to investigate the killing of 18 unarmed demonstrators by police officers, or to publish the reports of the Malawi Human Rights Commission and the commission of inquiry looking into the conduct of the forces of law and order.

11. He asked the delegation to say whether the annual visit of the Inspectorate of Prisons was made to each prison in the country or a single establishment and whether the Inspectorate was empowered to make unannounced visits and deal with prisoners' complaints. Given that the State party had said that the recommendations of the Inspectorate of Prisons were rarely implemented owing to a lack of resources, it would be useful to know what steps the State party intended to take to resolve that issue. He also asked the delegation to indicate the outcome of the investigations carried out by the Inspectorate of Prisons and the Malawi Human Rights Commission into violations of the human rights of persons in police custody.

12. **Mr. Bouzid** asked how many police officers suspected of acts of torture and ill-treatment had been prosecuted. He invited the delegation to explain why the Independent Police Complaints Commission was still not operational. He would also welcome information on the composition and powers of civil society groups authorized to visit prisons and on their activities.

13. **Mr. Flinterman**, noting that, in a report commissioned by the Government, the Malawi Human Rights Commission had indicated that female genital mutilation continued to be carried out in the south of the country, and that other sources also reported that some ethnic groups still carried out female genital mutilation, asked the delegation to provide information in that regard and to describe the action taken to eliminate the practice, particularly any information campaigns and educational activities. He asked whether the Gender Equality Act had ever been cited as grounds for criminal proceedings against the perpetrators of such acts.

14. He asked the delegation to provide information on temporary detention facilities and to indicate whether accused persons were held separately from convicted prisoners. He would also like information on the itinerant hearings being arranged to help the authorities tackle the backlog of cases and put a stop to the practice of holding persons in pretrial detention for long periods of time. He wished to know whether judicial staff had received training on the application of the new provisions reducing the maximum duration of pretrial detention and requested figures on the application of the wide range of provisions for fast-tracking of cases and for the use of non-custodial alternatives for accused persons, as listed in the Criminal Procedure and Evidence Code, the Child Care, Protection and Justice Act and article 25 of the Penal Code. Finally, he would like to know under what conditions accused persons could receive legal aid.

15. Lastly, noting that the maternal mortality rate in connection with illegal abortions was very high, he asked what steps had been taken to amend the legislation on abortion and remove the provisions punishing women who terminated their pregnancies, and to give women access to safe abortion procedures.

16. **Mr. Seetulsingh** asked what measures the Government of Malawi intended to take to lift the suspension of the procedure for accreditation of the Malawi Human Rights

Commission by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Commission had been tasked with helping persons sentenced to death with the formalities concerning commutation of sentence, despite the fact that it did not have the resources required to carry out its mandate, and he asked whether the Government of Malawi intended to hand that task over to the Ministry of Justice and Constitutional Affairs or some other competent body.

17. **Mr. Shany** asked whether the Constitution nullified the provisions of article 9 of the Citizenship Act setting forth the conditions under which Malawian women married to foreign nationals could retain Malawian nationality, or whether there were plans to amend the Act.

18. **The Chairperson** suggested suspending the meeting briefly to allow the delegation to prepare its replies to the questions it had been asked.

*The meeting was suspended at 4.40 p.m. and resumed at 5.05 p.m.*

19. **Ms. Banda** (Malawi) said that the Committee would be informed as to the number of persons sentenced to death since 2010 in due course. The Government of Malawi was working with the Malawi Human Rights Commission to compile a list of prisoners sentenced to death and to examine the possibility of commuting their sentences. A committee had been established to consider applications for pardons and to make recommendations in that regard.

20. **Mr. Nyirongo** (Malawi) said that the Law Commission was an advisory body responsible for preparing and submitting proposals for amendments to legislation and the Constitution. Since its creation, the Law Commission had published six reports on various human rights issues. The Commission had a purely advisory role so its task ended once its report had been submitted to the Government. As to abortion, a commission was currently considering the possibility of drafting a bill on the voluntary termination of pregnancy; however, that issue was already covered by the provisions on the right to sexual and reproductive health contained in the 2013 Gender Equality Act. The traditional customs imposed upon widows were no longer generally held to be acceptable by Malawian society. Given that such practices were harmful and constituted discrimination based on gender and marital status, they were covered by the Gender Equality Act and were prohibited; the same applied to female genital mutilation. The Marriage, Divorce and Family Relations Bill and the bill on trafficking submitted in 2011 by the Law Commission had not yet been adopted owing to the change of Government. However, consideration of the bills continued and was proceeding at a steady pace. The legislation on domestic violence was currently being reviewed; the consistency of its provisions with the Penal Code and a number of other laws needed to be verified. The amendments arising from that process should, among other things, simplify the task of those bodies working to combat the problem. Finally, the fact that certain provisions of the Citizenship Act were not in line with the constitutional principle of gender equality did not, in itself, constitute sufficient grounds for repealing them. For them to be repealed, their unconstitutionality would have to be challenged in the courts.

21. **Ms. Banda** (Malawi) said that, with regard to sexual minorities, the Malawi Human Rights Commission was working to promote debate on discrimination against such groups and an analysis of that discrimination. To date the Commission had not received any allegations of violence against homosexual, bisexual or transsexual persons. The Law Commission was currently examining the issue of medical treatment for HIV/AIDS infection. Owing to the parliamentary elections, the process of reforming the Malawi Human Rights Commission had not yet begun, although it remained a priority for the Government. One proposed reform involved changing the procedure for appointing the

Commissioner of the Malawi Human Rights Commission, so as to ensure that the appointee was fully independent.

22. **Ms. Chizumila** (Malawi) said that, in a welcome development, the budget of the Malawi Human Rights Commission had been considerably increased, from 38 million Malawi kwacha for 2011–2012, to 110 million Malawi Kwacha for 2013–2014. However, the budget was still not large enough to allow the Commission to effectively carry out all its tasks. She said that the Inspectorate of Prisons had visited all the penitentiary institutions in the southern regions of the country and that the Malawi Human Rights Commission also carried out prison visits.

23. **Mr. Kayira** (Malawi) said that the courts organized hearings in prisons in cooperation with judges, prosecutors, defence lawyers appointed as a part of legal aid and NGOs. A list of accused persons was drawn up and, where the court noted that the legal duration of pretrial detention had expired it immediately released the person. The Directorate of Public Prosecutions had held several information sessions on itinerant hearings for judicial officials and Ministry of Justice and police officials. Following the amendment of the Criminal Procedure and Evidence Code in 2010, the length of pretrial detention had been cut to a maximum of 90 days for a moderately serious offence and to 180 days for a serious offence such as murder or high treason.

24. **Ms. Banda** (Malawi) said that, under the new Legal Aid Act, the decision to assign a lawyer to a suspect was taken by the Legal Aid Bureau, which took into consideration the nature of the offence, the suspect's financial situation, the significance of the case in terms of legal precedent, the suspect's lack of familiarity with the language to be used in the proceedings, and whether the person had a disability. Furthermore, in order to make up for the lack of legal aid defence lawyers, the law provided that, in agreement with the courts, civil society organizations too could represent suspects in proceedings.

25. **Mr. Kanyama** (Malawi) said that police officials working in support units for victims of domestic violence received special training and that the police and civil society had formed partnerships so as to increase the support units' effectiveness. As to the use of firearms, law and order officials were obliged to apply the relevant provisions of the Police Act, or would be liable to prosecution. Following the events of 20 July 2011, during which around twenty demonstrators had been killed by the police, a commission of inquiry set up by the Government had carried out an investigation and submitted a report. On the basis of the commission's conclusions, several law and order officials had been arrested and suspended pending trial. The police had launched an inquiry. In order to ensure that such an incident did not occur again, the Government had invited the Irish police to Malawi to train the Malawian force in the maintenance of law and order during public demonstrations. The aim in that regard was for police officers to ensure the safety of persons without violating their rights. To tackle the issue of poor conditions of detention in police stations, lay visitors committees had been formed in accordance with the Police Act, with the power to visit police stations unannounced to check, inter alia, that women were held separately from men and minors separately from adults. Those committees then reported to the regional police commissioner, who acted on their recommendations.

26. **The Chairperson** invited those Committee members who wished to do so to ask the delegation further questions.

27. **Ms. Majodina** asked what measures were taken to ensure that persons who carried out the cleansing ritual for widows were prosecuted and whether any such cases had yet been brought before the courts. She also wished to know whether police officials were trained to investigate cases of domestic violence, whether women wishing to lodge complaints of domestic violence faced obstacles and whether they ever suffered further ill-treatment, particularly sexual abuse, at the hands of police officers. She asked the

delegation to say how many shelters there were in Malawi for women victims of trafficking in persons, whether they offered women long-term care and whether programmes were being implemented to combat trafficking in children to neighbouring countries.

28. **Mr. Flinterman** asked whether a law expressly stating that the Covenant formed part of the domestic legal order had been adopted or the provisions of the Covenant had been incorporated into any of the country's legal texts. If the latter was the case, he would like to know how the authorities ensured that the provisions of the Covenant were applied in accordance with the interpretation given by the Committee in its general comments. Noting that the Law Commission had only an advisory role, he asked whether the State party intended to decriminalize abortion and when a law enshrining the right to abortion could be adopted in Malawi.

29. **Mr. Vardzelashvili** asked the delegation to indicate the offences for which persons had been sentenced to death during the reporting period; he wondered whether the significant reduction in the number of prison deaths was linked to the increase in the resources allocated to prison administration and whether the State party intended to continue with that approach. Finally, he asked the delegation to indicate whether there was a mechanism for prisoners to submit complaints to the Inspectorate of Prisons and whether the Inspectorate acted on them, if need be.

30. **The Chairperson** asked how long, on average, persons sentenced to death who had applied for a pardon had to wait for a decision and whether persons held in pretrial detention for an excessively long time could claim compensation before the courts. He also wished to know to whom the Inspectorate of Prisons and the Malawi Human Rights Commission submitted their prison visit reports and whether they were made public.

31. **The Chairperson** thanked the delegation and invited it to reply to the additional questions that had just been put to it at the next meeting.

*The meeting rose at 6 p.m.*